IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1887 OF 2003
IN
SUIT NO.1938 OF 2003

Anita Sanjeev Malhotra
Nee Ghaswala ..Plaintiff

Vs.

Ajay Kumar Garg and Ors. ..Defendants

Mr.D.D.Madon a/w Mr.H.N.Thakore and Mrs.Agnes Baradia i/b Thakore Jariwala and Associates for the plaintiff

Mr.Shailesh Shah and Mr.P.N.Ganwani i/b Mayur Narendra & Co. for defendant no.1 and 3

CORAM : S.U.KAMDAR, J
DATED : 26TH OCTOBER, 2005

P.C.:

1. The present suit is filed in respect of property known as Gazdar House. There was an agreement entered into between the plaintiff and the defendants for the purpose of vacating of the 2nd Floor of the property known as Gazdar House. The said property is situated at Bhulabhai Desai Road, Bombay 400 026. Under the said agreement dt.22.10.94 it was agreed that the plaintiff who

was a tenant of the 2nd floor of Gazdar House, Bhulabhai Desai Road, Mumbai - 26 will be settled in the following manner:

2. That the plaintiff will be given two flats on a tenancy basis as and by way of alternate accommodation of 2000 sq.ft.(built up area) with about 300 sq.ft. terrace on the 21st floor of building known as 'Chaitanya Towers' situated at Plot no.952 (part) and 954 (part) of TPS IV Mahim on Appasaheb Marathe Marg, Prabhadevi, Bombay. It was further provided that over and above the same defendants will pay to the plaintiff a sum of Rs.4,21,00,000/-. Out of the aforesaid amount of Rs.4,21,00,000/- a sum of Rs.4,01,00,000/- has been paid by the defendant to the plaintiff. However, the defendants is not given accommodation on the 21st floor. It is the case of the plaintiff that since the defendnats did not acquire the said two flats on the 21st floor, the defendants agreed to give two flats being C-2204 and C-2304 on the 22nd and 23rd floor of the building known as Chaitanya Towers situated at Prabhadevi, Mumbai 25. Defendants have filed four affidavits in this court

being affidavits dt.20.10.05, two dt.24.10.05 and 26.10.05.

3. Affidavit dt.20.10.05 filed by him interalia states that in so far as flat no.C-2204 and C-2304 is concerned, he has no right, title and interest whatsoever. He has contended that defendant no.2 had contracted to purchase from defendant no.4 two flats on 21st floor in 'A' Wing for providing alternate accommodation to the plaintiffs therein, however it seems that defendant no.4 has sold of the said flat to third party. He has stated in para 2 of the affidavit that the proposed society of which defendant no.3 is a promoter has not entered into any agreement nor paid any consideration for flats C-2204 and C-2304 in the said building at Chaitanya Towers. Thereafter further affidavit has been filed on 24.10.05. The said affidavit was required to be filed because plaintiffs produced two maintenance receipts issued by Chaitanya Towers being Maintenance Receipt for flat no.C-2204 and C-2304 in which the name of Dimple Heights Co-op.Hsg.Soc. has been mentioned of which defendant no.1 and 3

are the promoters. When the said receipts were produced defendant no.3 has filed an affidavit interalia mentioning therein that the said bill were never received from the Society to him. However, he has stated that on 29.1.05 two bills were received in respect of the said flat being C-2204 and C-2304. He has further stated that he addressed a letter dt.3.5.05 to the Secretary of the said Chaitanya Towers Co-op.Hsg.Society Ltd. and mentioned that no payment of maintenance charges is required to be made because he has not been put in possession of the said flat.

4. The said affidavit does not disclose what are the rights of defendant no.1 and 3 through their society in respect of the said flats and thus, accordingly I directed them to file further affidavit. On the very same day further affidavit has been filed on 24.10.05 stating therein that the right of the said proposed society in whose name maintenance receipt for flat no.C-2204 and C-2304 is issued, is not supported by any documentary evidence. Once again the said affidavit being highly unsatisfactory I directed the defendants to

file a fresh affidavit and accordingly fourth affidavit is filed on dt.26.10.05 in which defendant no.3 has ultimately stated that there was an agreement in respect of two flats on the 21st floor and in respect of which NOC was issued under Chapter XX-C of the Income Tax Act. However, he stated that there was an oral agreement to give flat no.C-2204 and C-2304 in lieu of the two flats on 21st floor. He has further stated in the affidavit that he has paid no amount whatsoever in respect of the two flats. Thus, in effect defendant no.3 has taken up the contention that the plaintiff cannot be put in possession of the said two flats nor interim orders can be passed in respect of the said two flats situated at Chaitanya Towers because defendant no.1 and 3 has no right whatsoever in respect thereof. Therefore, it is clear that the defendants are not ready to comply with the obligation as contained in the said agreement dt. 22.10.94. It is also clear that the defendants are seeking to frustrate the said agreement but at the same time has taken possession of the Gazdar property in respect of which the said agreement has been entered into. In view of the

fact that the plaintiff has admittedly complied with the said agreement and is ready and willing to comply with the obligation of the said agreement necessary interim orders are required to be passed. In so far as the said two flats are concerned the same are not available for granting ad interim relief. In that view of the matter, an order is requried to be passed in respect of Gazdar House property which is the subject matter of the main agreement between the parties.

5. Court Receiver is appointed as Receiver in respect of 2nd floor Gazdar House property in which plaintiff was earlier tenant and which is in use occupation and possession of defendants no.3. Court Receiver is directed not to dispossess defendant no.3 and appoint him as an agent of Court Receiver. However, the same will be on usual terms and conditions without security but on payment of Royalty and compensation. If the defendant no.3 does not enter into agency agreement and / or commit any default in payment of royalty amount, Court Receiver to take possession of the property and seek further directions from the court. Court

Receiver to take inventory of the articles which are lying in the said flat. Liberty to the plaintiffs to apply for orders for removal of the articles after Inventory is done and consent is obtained from the sister of the plaintiffs with whom there are certain disputes pending. The learned counsel for the defendants seeks stay of the order. Stay rejected.